

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
T & M AUTO WRECKING, )  
Appellant, )  
vs. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB No. 158

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

This matter, the appeal of a \$50.00 civil penalty for an alleged violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, hearing officer) as a formal hearing in the Seattle offices of respondent at 9:30 a.m., November 17, 1972.

Appellant was represented by Robert McCollum and Lloyd McCollum, owners of T & M Auto Wrecking at the time of the alleged violation. Respondent was represented by Ronald L. Busby, respondent's chief enforcement officer. Evan Aaron, Seattle court reporter, recorded the

1 | proceedings.

2 | Witnesses were sworn and testified. Exhibits were offered and admitted.

3 | On the basis of testimony heard and exhibits examined, the Pollution  
4 | Control Hearings Board prepared Proposed Findings of Fact, Conclusions and  
5 | Order which were submitted to the appellant and respondent on January 16,  
6 | 1973. No objections or exceptions to the Proposed Findings, Conclusions  
7 | and Order having been received, and appellant having refused to accept a  
8 | certified letter containing the Proposed Findings, Conclusions and Order,  
9 | the Pollution Control Hearings Board makes and enters the following:

10 | FINDINGS OF FACT

11 | I.

12 | On July 29, 1972 at about 7:00 p.m., a fire of scrap lumber burned  
13 | in a barrel on the property of T & M Auto Wrecking, 1421 S. Barton,  
14 | Seattle, King County.

15 | The fire caused a plume of smoke which was recorded for six minutes  
16 | at an opacity of No. 5 on the Ringelmann scale.

17 | II.

18 | Appellant was cited by respondent in Notice of Violation No. 6090  
19 | for violation of Sections 9.02 and 9.03 of respondent's Regulation I.  
20 | Subsequently, a civil penalty of \$50.00, the subject of this appeal, was  
21 | invoked against appellant by respondent's Notice of Civil Penalty No. 321.

22 | III.

23 | T & M Auto Wrecking's small office had a heater stove which normally  
24 | was used for cooking, but July 29, 1972, was a hot day and a fire had  
25 | been kindled outside in the burn barrel to avoid heat during the  
26 | preparation of the evening meal. The fire in the burn barrel had been

27 | FINDINGS OF FACT,  
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used for cooking.

#### IV.

Section 2(b)(3) of respondent's Regulation I, as amended by respondent's Resolution No. 141, makes it unlawful to cause any outdoor fire from "any waste other than natural vegetation that emits dense smoke . . ." However, Section 2(c)(1) of respondent's Regulation I, as amended by Resolution No. 141, exempts from the above provision "small outdoor fires for . . . cooking . . . purposes." Section 1.07(oo) of respondent's Regulation I, as amended by Resolution No. 141, defines a "small outdoor fire" as one whose pile does not exceed four feet in diameter and three feet in height. Section 9.03 of respondent's Regulation I makes it unlawful to cause a smoke emission longer than three minutes in any one hour of greater opacity than No. 2 on the Ringelmann scale.

#### V.

The burn barrel cited in this matter was less than four feet in diameter, but was three feet or more in height, and (see Respondent's Exhibits Nos. 6 and 7) was filled to and above the top with flammable material.

#### VI.

Whether the smoke emitted from the barrel was "dense" is in dispute.

From these Findings, the Pollution Control Hearings Board comes to these

#### CONCLUSIONS

Whether the outdoor fire in this matter was in violation of respondent's Regulation I apparently turns on two points. Was it a

FINDINGS OF FACT,  
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1 higher emitting "dense" smoke? Was it a "small" cooking fire? Both  
2 questions appear difficult to answer with certainty, but we conclude  
3 that the preponderance of evidence indicates at least a technical  
4 violation. The smoke was heavy, if not dense. The dimensions of the  
5 fire came close to exceeding that of a legally defined small fire.

6 II.

7 However, there is not testimony indicating a deliberate attempt by  
8 appellant to violate respondent's Regulation I. The testimony, rather,  
9 indicates a careless disregard of that Regulation.

10 From these Conclusions, the Pollution Control Hearings Board makes  
11 this

12 ORDER

13 The appeal is denied, Notice of Violation No. 6090 is sustained,  
14 but collection of the \$50.00 civil penalty in Notice of Civil Penalty  
15 No. 321 is suspended pending no subsequent violation of respondent's  
16 Regulation I by appellant prior to July 29, 1972.

17 DONE at Olympia, Washington this 6th day of February, 1973.

18 POLLUTION CONTROL HEARINGS BOARD

19 Walt Woodward  
20 WALT WOODWARD, Chairman

21  
22 W. A. GISSBERG, Member

23 James T. Sheehy  
24 JAMES T. SHEEHY, Member